

REMARKS

The Notice of Non-Responsive Amendment mailed on August 8, 2005 indicated that the amendment filed on March 28, 2005 improperly amended each independent claim to be drawn to a non-elected species. The Notice is respectfully traversed.

While the Notice indicates that the amendment filed on March 28, 2005 amended each independent claim to be drawn to a non-elected species, applicants note that independent claim 66 was not actually amended.

The Advisory Action of April 26, 2005 indicates that the amendment of March 28, adds limitations which appear in originally filed claim 49, which claim was withdrawn from consideration. Claim 49 recites the limitation "assessing the student's performance by identifying the level of support used by the student." Applicants acknowledge that limitations that are substantially identical to the limitation of claim 49 were added to claims 1 and 54. Claim 1 was amended to add the limitation "assessing the student's performance based on the level of support presented to the student." Claim 54 was amended to add the limitation "an assessment of the student's performance based on the support presented to the student." Independent claim 64, however, was amended to add a different limitation, namely "assessing overall performance of the student based on responses related to the first learning activity or skill level and responses related to the second learning activity or skill level." And, as noted above, independent claim 66 was not amended.

In the Restriction Requirement of December 15, 2003, the following invention species were identified:

- a. embodiment of the invention directed to learning tasks, skill levels, and curriculum development (claims 6-25, 55-57, and 65)
- b. embodiment of the invention directed to a support system and the adjustment thereof (26-47, and 58-61)

- c. embodiment of the invention drawn to the storing of responses and report generation (claims 48-53, 62 and 63).

Claims 1-5, 55, 64 and 66 were deemed to be generic, drawn to a generic method and system for instruction.

The August 8th Notice of Non-responsive Amendment indicates that the independent claims read on the non-elected species of invention II (applicants assume that "invention II" corresponds to species "b" of the December 16, 2003 Restriction Requirement). The August 8th Notice further indicates that claims 6-25, 55-57, and 65 now read on previously unclaimed combination of the previously elected species of invention II and the non-elected species of invention II. Again, applicants assume that "invention II" corresponds to species "b" identified in the December 16, 2003 election requirement, and, moreover, the reference to "previously elected species of invention II" was an error and that what was meant was the previously elected species of invention "a".

The Notice of Non-Responsive Amendment further indicates that claims 48-53, 62, and 63 now read on a previously unclaimed combination of the non-elected species of inventions II and III. Applicants assume that inventions II and III refer to species "b" and "c" of the December 16, 2003 Restriction Requirement.

Applicants note that claims 48-53, 62, and 63 remain withdrawn. Furthermore, applicants question how amending claims 1 and 54 to add a limitation that is substantially identical to that of claim 49 could cause claims 6-25, 55-57, and 65 to read on non-elected species of invention II (i.e., species b) when claim 49 was indicated in the Restriction Requirement to be within the embodiment of species "c". Furthermore, applicants question how claim 49 could be deemed to be within the embodiment of species "c". Again, claim 49 recites "assessing the student's performance by identifying the level of support used by the student" which has nothing to do with species "c", which is directed to an "invention drawn to the storing of responses and report generation."

Furthermore, applicants are confused by the identification of species.

Species "c" is directed to storing of responses and report generation and includes claims 48-53, 62 and 63. Claim 48, for example, recites "storing the student responses." Independent claim 54, which was indicated to be generic, recites software adapted to "store in a database the student's responses." Thus, generic claim 54 appears to read on species "c".

Species "b" was directed to "a support system and the adjustment thereof." Original independent claim 1, which was indicated to be generic, recited a method comprising steps including "presenting to the student support from the pre-designed set of support," and "adjusting the support presented to the student based on responses to the learning task or skill level of the student." Similarly, independent claim 54, also indicated to be generic, was directed to an apparatus including a "database including a pre-designed set of support" and software adapted to "adjust the support presented on the display to the student based on responses to the learning task or skill level from the student." Thus, it would appear that generic claims 1 and 54 are also directed to the embodiment of species "b".

Furthermore, original independent claim 66, which was indicated to be generic, includes the step of "assessing the student's response to a task by evaluating the amount of support given the student regarding the task," which limitation is substantially identical to claim 49, indicated to be within species "c", and the limitations added to claims 1, and 54 which, according to the Notice of Non-Responsive Amendment, caused the claims to be drawn to a non-elected species.

In view of the above observations, applicants believe that the amendments to the independent claims did not cause the claims to be drawn to a non-elected species. The amendments to claims 1 and 54 merely added a limitation that was already part of generic claim 66. The amendment to claim 64 added a limitation that was never identified as being distinct to a particular species. Moreover, to the extent that the amendments to claims 1 and 54 adds a limitation that is substantially identical to the limitation of claim 49, applicants respectfully submit that claim 49 should not have been

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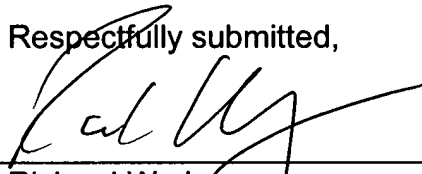
grouped within a species other than species "a". The limitation of claim 49 does not appear to fall within the scope of species "b" or "c" and further the limitation of claim 49 was also recited in original independent claim 66 which was deemed to be generic.

Applicants therefore respectfully request that the Notice of Non-Responsive Amendment be withdrawn and that the pending and non-withdrawn claims of this application be examined on the merits.

If the Examiner believes that a telephone conference would be useful for clearing any confusion regarding the status of the current claims and the appropriate species groupings of the claims, the Examiner is encouraged to contact the undersigned at the Examiner's convenience.

Respectfully submitted,

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